

ESTTA Tracking number: **ESTTA561067**Filing date: **09/24/2013**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

**Petitioner Information**

Name	Howl at the moon Restaurant and Bar		
Entity	LLC	Citizenship	USA
Address	585 A East 189 Street Bronx, NY 10458 UNITED STATES		

Correspondence information	Elizabeth Kajtazi Howl at the moon Restaurant and Bar 585 A East 189 Street Bronx, NY 10458 UNITED STATES fedlaw101@gmail.com Phone:347-884-1551
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**Registration Subject to Cancellation**

Registration No	4394833	Registration date	09/03/2013
Registrant	Howl USA LLC 30 West Hubbard Street - Suite 2000 Chicago, IL 60654 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 043. First Use: 1990/08/23 First Use In Commerce: 1990/08/23  
All goods and services in the class are cancelled, namely: Cocktail lounge and bar services;  
restaurant services, namely, providing of food and beverages for consumption on the premises

**Grounds for Cancellation**

Priority and likelihood of confusion	Trademark Act section 2(d)
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**Marks Cited by Petitioner as Basis for Cancellation**

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	Howl at the Moon Restaurant and Bar, LLC Howl at the Moon, Inc Howl at the Moon Restaurant Corp.		
Goods/Services	Food Services		

U.S. Application/ Registration No.	NONE	Application Date	NONE
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Registration Date	NONE
Word Mark	Howl at the Moon, Howl at the Moon Restaurant and Bar
Goods/Services	Food services

Attachments	Cancellation.pdf(57595 bytes )
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### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/s/ Elizabeth Kajtazi
Name	Elizabeth Kajtazi
Date	09/24/2013

IN THE UNITED STATES AND PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of U.S. Registration No. 4394833

HOWL AT THE MOON RESTAURANT & BAR, LLC	)	Cancellation No. _____
	)	
Petitioner	)	
	)	
Vs	)	
	)	
HOWL USA, LLC	)	
f/k/a Howl at the Moon Saloon, LLC	)	Petition to Cancel
		U.S. Registration No. 4394833
Respondent	)	

COME NOW Virginia Ivanova, attorney for Petitioner in the above reference matter, and files this Petition to Cancel U.S. Registration 4394833 for the reasons stated herein.

Howl at the Moon Restaurant & Bar, LLC. believes it is or will be damage by U.S. Registration No. 4394833 and International Class 043 and hereby petition to cancel same. As grounds therefore, it is alleged as follows:

**1- INTRODUCTION**

Petitioner is a New York Limited Liability Corporation with its principal place of Business at 585 (A) East 189<sup>th</sup> Street, Bronx New York 10458. Petitioner's business is a college restaurant and bar that has been lawfully incorporated in the state of New York for 17 years. Howl at the Moon Restaurant & Bar serves food and drinks and operates mainly as a family restaurant.

The Respondent owned and operated Howl at the Moon Saloon since 1990 with registration number 19900823. Their principal place of business is 30 West Hubbard Street-Suite 2000

Chicago Illinois 60654. Their services were to provide drinks and live entertainment (dueling pianos) in a night club style environment.

On or about November 14, 2011 Respondent informed Petitioner that they were contemplating filing a federal law suit if Petitioner did not remove the name “Howl at the Moon” from its place of business.

On February 7<sup>th</sup>, 2012 Petitioner, through counsel, immediately responded to their letter and informed them that in order to be a trademark violation the Petitioner would have to be similar, *not just in name*, but in services and goods offer to the public. For example:

1. Respondent's Howl at the Moon and Saloon has a Dueling Piano Bar and Live Entertainment. The Petitioner does not offer the dueling piano bar or any live entertainment.
2. Respondent displays a logo of a wolf standing on a piano howling at the moon. (See [www.howlatthemoon.com](http://www.howlatthemoon.com)) Petitioner does not have a logo that's identical to that of your client.
3. Petitioner for the last 17 years has offer food and drinks. Respondent does not offer food but only drinks and signature cocktails.
4. Respondent offers drinks and entertainment to the general public. Petitioner caters mainly to students from Fordham University in the Bronx that makes up about 80% of his clientele.

The Respondent did not file an answer to Petitioner’s reply and instead filed a federal civil law suit in the U.S. District Court for the Southern District of New York claiming trademark violations. (N.Y.S.D. 13-cv-4035)

Then on July 5<sup>th</sup>, 2013 the Respondent decided to file a new Trademark by removing Saloon from their trademark name and adding restaurant and food services (class 043) to their Howl at the Moon business under the new trademark registration number 4394833. The registration date is September 3, 2013. It is believe that by removing the word “Saloon” and adding restaurant and food services the Respondent is trying to be similar to Petitioner’s business in name and services and to gain an advantage in the ongoing federal litigation. Moreover, there is now a

reasonable likelihood that this new trademark registration, if allowed, will create confusion among Petitioner's patrons.

## **2- The Law**

15 U.S.C. § 1064 [Trademark Act § 14] A petition to cancel a registration of a mark, stating the grounds relied upon, may, upon payment of the prescribed fee, be filed as follows by any person who believes that he is or will be damaged, including as a result of a likelihood of confusion of dilution by blurring or dilution by tarnishment under section 43(c), by the registration of a mark on the principal register established by this Act, or under the Act of March 3, 1881, or the Act of February 20, 1905:

(1) Within five years from the date of the registration of the mark under this Act.

(2) Within five years from the date of publication under section 12(c) hereof of a mark registered under the Act of March 3, 1881, or the Act of February 20, 1905.

307.02 Petition That Must Be Filed Within Five Years from the Date of Registration

In the instant case this Petition is timely filed since the Respondent files their registration on July 5<sup>th</sup>, 2013.

## **3- First Cause of Action**

### **CANCELLATION OF REGISTRATION**

Respondent's registration of Howl at the Moon number 4394833 by adding Restaurant and Food services under Class 043 must be cancelled as it will create confusion and is similar to the services offer by Petitioner.

The Respondent's attempt to file this new registration is designed only to gain a tactical advantage in their frivolous lawsuit that was filed in federal court and is being done in bad faith.

Upon information and belief, it appears that the Respondent has misrepresented to the Trademark Office and made false statements to deceive the Trademark Office in order to gain the registration. The Respondent has known for many years that Petitioner has been serving food and drinks for 17 years and now they have tried to become similar to Petitioner 's business by adding class 043 to their registration.

#### **4- Second Cause of Action**

##### **CANCELLATION OF REGISTRATION**

Respondent's registration of Howl at the Moon Saloon number 4394833 by removing Saloon from their Trademark Registration ("Howl at the Moon Saloon") must be cancelled as it will create confusion and is similar to Petitioner business name.

The Respondent's attempt to file this new registration is also designed only to gain a tactical advantage in their frivolous lawsuit that was filed in federal court and is being done in bad faith.

Upon information and belief, it appears that the Respondent has misrepresented to the Trademark Office and made false statement to deceive the Trademark Office in order to gain the registration. The Respondent has known for many years that Petitioner has been using the name "Howl at the Moon" and "Howl at the Moon Restaurant and Bar" for 17 years and now they have tried to become similar in name.

##### **PRAYER**

The existence of the registration sought to be canceled damage to Petitioner in that Respondent is now trying to copy Petitioner's business name to be identical and similar services by offering food.

Wherefore, Petitioner pray that the U.S. Registration No. 4394833 be canceled.

Respectfully submitted,

Date: September 23, 2013

/s/ Virginia Ivanova

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### **CERTIFICATE OF SERVICE**

I, Virginia Ivanova Esq., hereby certify that I mailed a true copy of my Petition for Cancellation of Registration 4394833 to the following interested parties:

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Mark I. Peroff  
Alpa V. Patel  
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Attorneys for Respondent: Howl USA, LLC

Howl USA, LLC  
30 West Hubbard Street – Suite 2000  
Chicago, IL 60654

Respectfully submitted,

Date: September 23, 2013

/s/ Virginia Ivanova

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